MALAYSIAN REPORTS

TAN CHWEE GEOK & ANOR. v. KHAW YEN-YEN & ANOR.

[F.C. (Suffian L.P., Lee Hun Hoe C.J. (Borneo) and Ali F.J.) May 9, 1975]

[Kuala Lumpur — Federal Court Civil Appeal No. 126 of 1974]

Practice and Procedure — Specially indorsed writ — Claimed based on allegation of fraud — Application to convert writ to generally indorsed writ — Whether application can be granted — Application to rectify register of members of company — Whether to be made by motion or summons — Joinder of causes of action — Contracts Act, s. 168 — R.S.C. 1957, O.3 r.6, O.18 r.1, O.53B r.6, O.70 r.1.

The respondents had commenced an action against the two appellants by way of a specially indorsed writ seeking (a) a declaration that certain transfers of shares were void; (b) rectification of the register of members of the second appellant company and (c) that the first appellant held the shares in trust for the respondents. The appellants entered a conditional appearance. Subsequently the appellants applied to have the writ converted to a generally indorsed writ. The appellants applied to set aside the writ on the grounds that the writ had been improperly issued, was defective in form and did not comply with the Rules of the Supreme Court; that the specially indorsed writ had been improperly issued and that there had been improper joinder of causes of action. The learned judge allowed the respondent's application and dismissed the appellant's application. The appellants appealed.

Held, dismissing the appeal: (1) *(Per* Suffian L.P. and Ali F.J., Lee Hun Hoe C.J. dissenting) the use of a specially indorsed writ where the plaintiff's claim is founded on an allegation of fraud, does not make the writ a nullity but it is open to the court to direct the action to go to trial in the ordinary way or as in this case to allow the writ to be converted to an ordinary writ;

(2) *(Per curiam)* although Order 53B rule 6 provides that an application to rectify the register of members of a company should be by motion or summons, it would appear that the best way of resolving the contest between the parties in this case would be by way of writ;

(3) *(Per curiam)* there has been no improper misjoinder of causes of action in this case, as it would be most convenient to have the complaints against the deceased's estate and the company tried and disposed of together.

Khong Kim Ching v. *Hassan bin Din & Ors.*(2) disapproved.

[Editorial Note: We understand that the appellants' application for leave to appeal to the Privy Council was refused. They have not asked for further leave from the Privy Council and have abandoned any further appeal.]

Cases referred to:-

(1) *Re Coles and Ravenshear* [1907] 1 K.B. 1, 4.
(2) *Khong Kim Ching* v. *Hassan bin Din & Ors.* [1973] 2 M.L.J. 173.
(3) *Looi Guan Kwang* v. *Low Lean Bok & Ors.* [1937] M.L.J. 34, 37.
(4) *Mitchell* v. *Harris Engineering Co. Ltd.* [1967] 2 All E.R. 682, 686.
(5) *Anlaby & Ors.* v. *Praetorius* 20 Q.B.D. 764.
(6) *Fry* v. *Moore* 23 Q.B.D. 395.
(7) *Hamp-Adams* v. *Hall* [1911] 2 K.B. 942.
(8) *Craig* v. *Kanssen* [1943] 1 K.B. 256.
(9) *Mabro* v. *Eagle, Star and British Dominions Insurance Co.* [1932] 1 K.B. 488.
(10) *Finnegan* v. *Cementation* [1953] 1 Q.B. 688.
(11) *Dismore* v. *Milton* [1938] W.N. 305.
(12) *Wallingford* v. *Mutual Society* L.R. 5 App. Cas. 697.
(13) *Lawrence* v. *Lord Norreys* L.R. 15 App. Cas. 221.
(14) *Achutha Naidu* v. *Oakeley Bowden & Co.* 69 I.C. 927.
(15) *Lee Kim Man* v. *Chin Kon San* [1973] 2 M.L.J. 101.
(16) *Grant Advertising International Inc. & Anor.* v. *Glaze* [1968] 1 M.L.J. 31.

FEDERAL COURT

Thayalan Kanapathippillai for the appellants.

Lim Kean Chye for the respondents.

Suffian L.P. (read by **Ali F.J.**): In this appeal we are only concerned with procedure.

The plaintiffs (respondents before us) are the daughters of the late Tan Sri Khaw Kai Boh (hereinafter referred to as "the deceased") by his first wife. The first defendant (first appellant) was the second wife of the deceased and the sole executrix and beneficiary under his will. She is the beneficial owner of all the issued shares in the second defendant other than the plaintiffs' 500 shares. The second defendant (second appellant) is a private limited company, of which the first defendant is also a director.

On March 31, 1973, the plaintiffs commenced an action against the two defendants by way of a specially indorsed writ accompanied by a concise statement of claim praying for —

(1) a declaration that two purported transfers dated September 20, 1968, of shares in the defendant company to their late father were void;

(2) rectification of the second defendant company's register of members by striking out from it the deceased's name and by inserting the names of the plaintiffs as holders of those shares;

(3) alternatively, as against the first defendant a declaration —

(a) that she holds the said shares in trust for them; and

(b) that an order that the first defendant transfer the same to them;

(4) a declaration that the second plaintiff is a director of the company; and

(5) for necessary accounts and inquiries.

On the same day the plaintiffs filed a separate statement of claim. They alleged that the purported transfers were made without consideration and therefore void; alternatively, they relied on section 168 of the Contracts (Malay States) Ordinance, 1950, and section 103(1) of the Companies Act, 1965; and finally they relied on the doctrine of resulting trust. The defendants entered conditional appearance on April 5, 1973. The statement of defence has yet to be filed.

On April 24, 1973, the plaintiffs, by summons in chambers applied for an order that the writ be converted into a generally indorsed writ by striking out the words "specially indorsed" appearing in its heading and that the statement of claim therein be treated as a statement of claim under a generally indorsed writ; that the name of the defendant company be changed to its correct name, *i.e.*, "Wonli Investment Company Sendirian Berhad"; and that the costs of the application and the amendments be paid by them (the plaintiffs).

On the same day the defendants applied to set aside the writ and all subsequent proceedings for irregularity on the grounds that the proceedings have been

improperly issued, are defective in form and do not comply with the Rules of the Supreme Court, in particular Order 53B, rule 6; that the specially indorsed writ has been improperly issued; and that there has been improper joinder of causes of action.

Both applications were considered together in chambers. The learned judge dismissed the defendants' and allowed the plaintiff's application, thus making an order directing that the specially indorsed writ be converted to a generally indorsed writ, that the statement of claim be treated as a statement of claim under a generally indorsed writ and that the name of the defendant company be changed to its correct name, the Wonli Investment Sendirian Berhad.

The defendants have appealed to us.

With respect to learned counsel for the defendants, I do not think that there is any merit in this appeal.

The Rules of the Supreme Court are intended to facilitate, not impede, the administration of civil justice.

In the bad old days in England from where we took our Rules, if you put a comma wrong you were thrown out of court, so strict were they about technicalities.

But over the years this strictness gave way to common sense, and every time the Rules were amended it was with the object of removing fussy technicalities, and making it easier for parties to get justice.

This changed attitude was reflected in the remarks of Lord Collins M.R. about 70 years ago in *Re Coles and Ravenshear*: [1]

"Although a court cannot conduct its business without a code of procedure, the relation of the rules of practice to the work of justice is intended to be that of handmaid rather than mistress; and the court ought not to be so far bound and tied by rules, which are after all only intended as general rules of procedure, as to be compelled to do what will cause injustice in the particular case."

Today O.70 r.1 of our Rules explicitly states that non-compliance with our Rules —

"shall not render any proceedings void unless the court or a judge shall so direct... ."

First, it is argued on behalf of the defendants that, as the claim by the plaintiffs is based on an allegation of fraud, they should have used a generally indorsed writ from the beginning; that the use of a specially indorsed writ was an illegality because it was forbidden by O.3 r.6, which reads:

"In any action other than... a claim by the plaintiff based on an allegation of fraud, the writ of summons may, at the option of the plaintiff, be specially indorsed with and accompained by a statement of his claim."

and *Khong Kim Ching* v. *Hassan bin Din and Others*[2] is cited as an authority for this proposition.

In view of the attitude which the court should adopt towards non-compliance with the Rules, with respect I am unable to agree with the decision of Chang Min Tat J. in *Khong's* case that O.3 r.6 forbids the use of a specially indorced writ where the plaintiffs' claim is founded on an allegation of fraud. I think that he went too far there and that he should have adopted a liberal attitude in keeping with the spirit of the times.

Second, it is argued on behalf of the defendants that by issuing this writ the plaintiffs have contravened O.53B r.6 which reads:

"Application to rectify the register of members of a company under section 101 of the [Companies] Ordinance shall be made by *motion or summons*."

It is said that the plaintiffs should have applied to the court by motion or summons.

With respect I do not think there is any merit in this argument. It is obvious from the correspondence that we have seen in the appeal record, and from exchanges between counsel before us, that this is going to be a hotly contested case, and that being so the best way of resolving the contest is by a proper action started by way of writ, and so on. If the plaintiffs had applied by motion or summons, there would have to be a full-scale trial with witnesses giving evidence and all, if the court is to decide on the matters in controversy.

Third, it is argued on behalf of the defendants that there has been improper misjoinder of causes of action. With respect I do not think there has been. It will be most convenient to have the complaints against the deceased's estate and against the company tried and disposed of together.

I am satisfied in the words of Aitken J. in *Looi Guan Kway* v. *Low Lean Bok and Others*[3] that: —

(1) there is *bona fides* on the part of the applicant;

(2) these amendments cause no prejudice to the other side which cannot be compensated by costs; and

(3) they are not such as to turn a suit of one character into a suit of another and inconsistent character.

During the course of arguments it was stated on behalf of the defendants that if the plaintiffs' application is rejected and the defendants' allowed, then the plaintiffs would not be able to file a fresh suit because they would then be time-barred, and it was stated on behalf of the plaintiffs that the plaintiffs made their application before the period of limitation. But as to this, what Lord Denning M.R. said in *Mitchell* v. *Harris Engineering Co. Ltd.*[4] is relevant. He said:

"In my opinion, whenever a writ has been issued within the permitted time, but is found to be defective, the defendant has no right to have it remain defective."

I would therefore dismiss this appeal, so that this dispute can go to trial on the merit.

Lee Hun Hoe C.J. (Borneo): I have read the judgment of the Lord President. I agree that the appeal be dismissed. I would like to add a few words. In so far as the grounds regarding breach of O.53B r.6 and improper joinder of causes of action are concerned, I concur entirely with the reasons given by the Lord President.

As regards the allegation of fraud, I would agree that if a specially indorsed writ is used, it would perhaps amount not to an irregularity, but a nullity being in contravention of O.3 r.6 My reading of O.3 r.6(1) is

that a plaintiff may, at his option, have his writ specially indorsed in any action except libel, slander, malicious prosecution, false imprisonment, seduction, breach of promise of marriage and where fraud is alleged. In other words, actions in respect of the seven exceptions must be by generally indorsed writ. If a specially indorsed writ is used for any of the seven exceptions, such a writ may be declared void. The purpose of excluding the seven cases from using the specially indorsed writ is to deprive the plaintiff from obtaining summary judgment under O.14. I do not think such a non-compliance could be waived as it is a fundamental breach.

While I appreciate that the rules of the Supreme Court are meant to facilitate and not to impede the administration of justice in civil matters, it is important to see that justice is not done at the expense of one party. The non-compliance of the rules must be so serious as to amount to a nullity and not merely an irregularity. If it is a nullity, it is not curable. O.70 r.1 cannot come to its aid. The party affected by such non-compliance is entitled to ask the court to do justice to him by setting it aside *ex debito justitiae*. See *Anlaby and Others* v. *Praetorius*.[5]

It is difficult to draw a precise line separating an irregularity from a defect which makes a writ a nullity. In *Fry* v. *Moore*[6] the court had to decide whether an order for substituted service was a nullity. The writ was properly issued but it was improperly served. Held it was an irregularity. Lopes L.J. said at page 399: —

"It is said that the proceeding was a nullity, and no doubt the distinction between a nullity and a mere irregularity in procedure is often a very nice one. But, in the present case I think there was only an irregularity."

In *Hamp-Adams* v. *Hall*[7] the writ was served but the date of service was not endorsed on it within three days as required by the rules. The plaintiff signed judgment in default of appearance and obtained a verdict for damages. Held that non-compliance with the rule which required due endorsement of the date of service was not an irregularity which could be waived, and that plaintiff not having complied with the rule, was not entitled to proceed by default and the verdict and judgment must be set aside. Vaughan Williams L.J. remarked at page 944: —

"It is said that it is a very severe penalty to put on a mistake of this kind that all the subsequent proceedings should be set aside. I am not at all impressed by that argument. Where proceedings are taken by a plaintiff in the absence of the defendant it is most important that there should be at every stage a strict compliance wiht the rules, and therefore it is a reasonable and proper thing in the case of proceedings by default to treat non-compliance with such a rule as Order IX., rule 15, not as a mere irregularity which can be waived, but as a matter which prevents any further proceedings from being taken on the writ."

Then, there is the case of *Craig* v. *Kanssen*.[8] Plaintiff obtained judgment on January 12, 1937. He was granted an order giving him leave to proceed to the enforcement of the judgment. The order was obtained on an affidavit of service purported to have been served on defendant by posting it to an address alleged to be defendant's place of business and residence. The address stated was not the address for service given in the action and the defendant was not residing or carrying on business at the stated address. He never received the summons. Held by the Court of Appeal that failure to serve process where service of process was required rendered null and void an order made against the party who should have been served. The court could set aside such an order in its inherent jurisdiction and it was not necessary to appeal from it. Lord Greene M.R. said at page 262: —

"In my opinion, it is beyond question that failure to serve process where service of process is required goes to the root of our conceptions of the proper procedure in litigation. Apart from proper *ex parte* proceedings, the idea that an order can validly be made against a man who has had no notification of any intention to apply for it has never been adopted in this country. It cannot be maintained that an order which has been made in those circumstances is to be treated as a mere irregularity and not as something which is affected by a fundamental vice."

After discussing about the affidavit he went on at page 263: —

"In the present case, as appears from the affidavit of service, the summons was not sent to the address for service of the defendant, so the rule was not complied with and the alleged service mentioned in the affidavit was no service at all. It was clearly a mistake and there can be no suggestion of bad faith, but there was no warrant or justification in the rules of court for obtaining the order of January 18, 1940, in such circumstances. That order is a nullity, and it must be set aside."

The Rules of the Supreme Court must *prima facie* be followed. If this is not so then a party in breach of the rules can always say "I can go to the court and get it put right." No doubt strictness has advantages. It will teach the practitioners to be precise. It will also encourage practitioners to take the trouble to study the rules properly and in depth. If the rules are not followed, it would also defeat the very purpose of having such rules which provide for the proper conduct of litigation. But, the court should not be so strict as to penalise every mistake as in the old days in England when plaintiff selected a wrong form of action he would be non-suited. So, the question whether non-compliance is an irregularity or a nullity assumes great importance.

In this case appellants mentioned limitation. It is true that the court will not allow a person to be added as plaintiff to an action or to change the capacity in which he sues, if thereby a defence under the Limitation Act would be defeated. See *Mabro* v. *Eagle, Star & British Dominions Insurance Co.*;[9] *Finnegan* v. *Cementation*.[10] On the other hand, the mere fact that plaintiff's action may be barred by the Limitation Act is no ground for striking out. See *Dismore* v. *Milton*.[11] Under O.28 r.12 a judge may amend any defect or error in any proceedings and has full power of his own to make any amendment which he deems necessary for the purpose of determining the question at issue between the parties.

O.70 r.1 provides that non-compliance with the rules "shall not render any proceedings void unless the court or a judge shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the court or judge shall think fit." Irregularities as opposed to nullities are thus curable under the rule. The court has wide discretion in such cases. As was quite properly pointed out by

counsel for respondent in this case the application to set aside the specially indorsed writ was for irregularity and appellants were bound by their own pleading. Nullity was never pleaded.

Appellants assumed that there was allegation of fraud by virtue of section 168 of the Contracts Ordinance. In a pleading if fraud is alleged it must be distinctly set out and its details specified. General allegations, however strong, are insufficient to amount to an averment of fraud of which any court ought to take notice. See *Wallingford* v. *Mutual Society*;[12] *Lawrence* v. *Lord Norreys*.[13]

Appellants relied on *Achutha Naidu* v. *Oakeley Bowden & Co*.[14] which was also cited in *Pollock & Mulla* on Indian Contract and Specific Relief Act, 8th Edition, page 670. Section 168 of the Contracts Ordinance reads as follows: —

"If an agent deals on his own account in the business of the agency without first obtaining the consent of his principal and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction, if the case shows either that any material fact has been dishonestly concealed from him by the agent, or that the deals of the agent have been disadvantageous to him."

In *Achutha Naidu's* case section 215 (equivalent to our section 168) was discussed. It was submitted that under that section it was necessary to show that the agent had concealed material facts fraudulently and derived benefit as a result thereof before any transaction could be rendered void.

On the other hand, counsel for respondents pointed out that they had never alleged fraud. In fact, they were careful not to do so. The present case is concerned with the question of agency and the validity of the transfers. Further, appellants could not ask respondents to allege fraud if no such allegation was made. *Achutha Naidu's* case has nothing to do with pleading. Counsel for respondents maintained that their claim was one of 'benefit' rather than 'dishonesty' under the second half of section 168. Consequently, he submitted that the decision of Chang Min Tat J. in *Khong Kim Ching* v. *Hassan bin Din & Ors*.[2] did not apply.

For myself, I cannot say that appellants have convinced me that there is any allegation of fraud. Before a plea of fraud is put on record, it is the duty of counsel to insist on being fully instructed on the matter. Such a plea should never be pleaded on flimsy material. Since appellants have not succeeded on fraud the question of nullity does not arise. In dealing with irregularities the court has wide discretion. *Lee Kim Man* v. *Chin Kon Sang*[15] is not directly of much assistance as it deals with another aspect of O.3 r.6.

I think the cases of *Grant Advertising International Inc. & Anor.* v. *Glaze*[16] and *Khong Kim Ching* v. *Hassan bin Din & Ors*.[2] can be reconciled. In *Khong's* case the speciallyy indorsed writ was found to contain allegations of fraud. It was held that no claim founded on an allegation of fraud can be made by a specially indorsed writ and in so doing by their amendments, the plaintiff was in breach of a rule which expressly forbid such a practice. I think Chang Min Tat J. was right to say that "the specially indorsed writ which is indorsed with a statement of claim containing claims contrary to Order 3 rule 6 is a nullity and not a curable irregularity." In other words, he was exercising his power under O.70 r.1 to declare the writ to be void as it was a fundamental vice. He was aware of *Grant's* case which was cited to him. As he said in that case the application there was concerned with a number of amendments and there Raja Azlan Shah J., as he then was, allowed a party to convert his specially indorsed writ to a generally indorsed writ. In *Grant's* case plaintiff applied for amendments to the writ and pleaded fraud for the first time and the learned judge was fully aware that if fraud was pleaded in a specially indorsed writ it would be a nullity. From what he said it was clear he wanted to prevent the writ from becoming a nullity. He said at page 32: —

"As the plaintiffs have pleaded fraud for the first time, they must, as a matter of necessity, apply for conversion of the specially indorsed writ to a general writ."

Later on he added: —

"If I allow the plaintiffs the amendment to the statement of claim, it follows, in my view, under Order 3 rule 6 that I must allow them the conversion of the writ with the necessary indorsement."

Apparently, the intention of the learned judge was to allow the conversion in order to permit plaintiff to include fraud without contravening O.3 r.6. I think the better course is to allow conversion first followed by amendment. Because, in my view, if a specially indorsed writ is allowed to be amended first by including fraud, then it would contravene O.3 r.6. It might be declared void under O.70 r.1 in which case it would render conversion impossible. In *Grant's* case the two matters seemed to have been dealt with together but the learned judge had made his intention quite clear.

Since the specially indorsed writ in this case was allowed to be converted, it should be complete. I would further strike out from the body of the writ the whole paragraph reading: —

"If the defendant enters an appearance he must also deliver a defence within fourteen days from the last day of the time limited for appearance, unless such time is extended by the court or a judge, otherwise judgment may be entered against him without notice, unless he has in the meantime been served with a summons for judgment."

Because it seems to me that this paragraph is only inserted in the body of a specially indorsed writ to warn "defendant that plaintiff might obtain summary judgment if defence is not delivered within time.

For reasons given, I feel that on the ground of allegation of fraud, the appellants also failed. Accordingly, the appeal would be dismissed with costs.

Ali F.J.: The appellants are seeking to set aside the writ issued against them on March 31, 1973. In their summons in chambers they said the writ is irregular on the following grounds —

(1) That it failed to comply with Order 53B rule 6 of the Supreme Court Rules, 1967;

(2) That the writ being specially indorsed was improperly issued; and

(3) That there was a misjoinder of causes of action.

The respondents at the same time have also applied to amend the writ by striking out the words

"specially indorsed" which appear thereon at the top. They said the words were added by mistake. On the arguments before him the learned judge, Raja Azlan Shah F.J. dismissed the appellants' application. He granted the respondents' application and ordered the writ to be converted or amended to a general writ. Hence this appeal.

On ground (1) of their application the appellants maintained that proceedings against the second appellant company should have been commenced by notice of motion or summons as required by Order 53B rule 6 of the Rules and not by a writ as in this case. The respondents' main claim in the action is for a declaration to invalidate the transfers of their shares to their father during his lifetime. Based on that declaration they also asked for an order to rectify the Company's register so far as it relates to the registration of the said transfers. It is clear that the order for rectification is necessarily in the nature of an ancilliary or consequential relief. As separate proceedings by motion or summons would involve additional costs and the Rules were designed to reduce costs the respondents have not done anything seriously wrong by making the said appellant company a party to the action.

On ground (2) the contention by the appellants is that the writ is a nullity. In support they relied on the decision of Chang Min Tat J. in *Khong Kim Ching* v. *Hassan bin Din & Ors.*[2] In that case the learned judge said on page 176 —

"It seems to me that where no effective conversion can be achieved on any application, if made, the conclusion must be that the specially indorsed writ which is indorsed with a statement of claim containing claims contrary to Order 3 rule 6 is a nullity and not a curable irregularity." (Italics supplied).

As the words italicized would tend to suggest that it is within the powers of the court or a judge to declare or not to declare a writ void it is difficult to know the circumstances in which the powers can properly be exercised. A writ is in two Forms. Form 2 is for a general writ and Form 3 for a specially indorsed writ. They are set out in the First Schedule to the Rules. In my judgment in whatever form it is issued a writ is strictly a formal command on the defendant to enter an appearance within so many days if he wishes to dispute the claim against him. He does not have to enter appearance unless the writ is properly served on him in accordance with the provisions of Order 9. Under Order 12 rule 30 he may take out a motion or summons to set aside the service of the writ if it was not properly served. But the appellants' application was for setting aside the writ itself which if granted would mean that the respondents may have to issue a fresh writ in order to maintain their claim or claims. This they may not be able to do if in the meantime their claim is already barred by limitation. The question, therefore, is whether a plaintiff's claim should be allowed to be defeated by a technical objection such as in this case? My answer is that it should not be allowed, for the plain intention of the Rules as reflected in Order 70 is clearly that non-compliance with the Rules or with any Rule of practice for the time being in force shall not render any proceedings void.

Assuming that the claim by the plaintiffs in the instant case is based on an allegation of fraud as was contended by the defendants it can only mean that in terms of Order 3 Rule 6(1) they do not have the option to issue a writ specially indorsed with or accompanied by a statement of claim as in Form 3. Should they issue such a writ they would no doubt be guilty of non-compliance for in terms of Order rule 3 the proper writ is in Form 2.

In my view the option or right to issue a specially indorsed writ under Order 3 rule 6(1) necessarily implies a right to apply for summary judgment under Order 14. In other words, a plaintiff who does not have the option or right is not entitled to apply for summary judgment. Logically it follows that even if he issues a specially indorsed writ in Form 3 he cannot be entitled to summary judgment. If not entitled does it also mean that the action commenced by such a writ cannot go to trial in the ordinary way? This would happen if the writ is set aside as null and void.

The plaintiffs in the instant case are not or have no intention of applying for summary judgment under Order 14. Such application if made and resisted by the defendants on the ground that the writ issued was not properly indorsed would clearly result in the court or a judge refusing summary judgment and directing the action to go to trial in the ordinary way. In my judgment the learned judge in the instant case was doing just that when he directed the specially indorsed writ to be converted to a general writ as was done by him previously in the case of *Grant Advertising International Inc. & Anor* v. *Glaze.*[16] I have no doubt that he was right on both occasions having applied the correct principle or principles. The general principle, I think, is that rights of parties in an action are not to be defeated by technical objections. I regret to say that I am unable to agree with the view taken in *Khong Kim Ching* v. *Hassan bin Din & Ors.*[2] Ground (2) therefore also fails.

Lastly, ground (3) which complains of a misjoinder of causes of action. This would have been dealt with at the same time as ground (1) but for the appellants' contention that until the case for the main declaration has been made out by the plaintiffs they have no cause of action against the second appellant company. I fail to see the force of this argument. As it seems to me if the plaintiffs have a cause of action against the first defendant they must also have a cause of action against the defendant company. In view of the nature of the claim by the plaintiffs I think the Rules would require the two causes of action to be joined as both can conveniently be tried and disposed of at one trial. Order 18 rule 1 would seem to contemplate such a situation. Order 53B rule 6 which requires proceedings for rectification to be by way of motion or summons applies to cases of obvious error which must be rectified.

For the reasons above stated I agree that this appeal be dismissed.

Appeal dismissed.

Solicitors: *Skrine & Co.; Lim Kean Chye & Co.*